

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 09-70632

MICHAEL E. PIONTEK,

Chapter 7

Debtor.

Judge Thomas J. Tucker

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**ORDER DENYING CITIZENS BANK'S MOTION FOR COURT APPROVAL  
OF REAFFIRMATION AGREEMENT (DOCKET # 25), AND DISAPPROVING  
REAFFIRMATION AGREEMENT (DOCKET # 24)**

This case is before the Court on creditor Citizens Bank's motion entitled "Motion for Court approval of Reaffirmation Agreement," filed on February 18, 2010 (Docket # 25, the "Motion"). The Motion seeks approval of a Reaffirmation Agreement between Debtor and Citizens Bank, also filed on February 18, 2010 (Docket # 24).

Debtor filed his voluntary petition for relief under Chapter 7 in this case on October 2, 2009. The date first set for the § 341(a) meeting of creditors was November 25, 2009 (Docket # 6). On January 25, 2010, the Court entered an order granting Debtor a discharge under 11 U.S.C. § 727 (Docket # 19).<sup>1</sup>

The deadline to file a reaffirmation agreement is established by Fed.R.Bankr.P. 4008(a) — the deadline is "no later than 60 days after the date first set for the meeting of creditors under § 341(a) of the Code." In this case, the deadline was January 25, 2010. Rule 4008(a) also provides that the Court may "at any time and in its discretion," extend this deadline. But this rule and

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<sup>1</sup> It appears that the discharge order was entered one day too soon. The deadline for objections to discharge was Monday, January 25, 2010 (60 days after the date first set for the § 341(a) meeting of creditors, *see* Fed.R.Bankr.P. 4004(a), which was Sunday, January 24, 2010, delayed until Monday, January 25, 2010 under Fed.R.Bankr.P. 9006(a)(1)(C).) The discharge order should have been entered on Tuesday, January 26, 2010, instead of one day earlier. But the entry of the discharge order one day early is not material to the Court's rulings in this Order.

Fed.R.Bankr.P. 4004(c)(1)(J) contemplate that such a motion to extend can only be granted if the discharge has not yet been granted. *See* Fed.R.Bankr.P. 4008 advisory committee notes to 2008 Amendments (“Rule 4004(c)(1)(J) accommodates . . . an extension [of time for filing a reaffirmation agreement] by providing for a delay in the entry of discharge during the pendency of a motion to extend the time for filing a reaffirmation agreement.”). No such motion was filed before the discharge was entered, so the Court may not extend the deadline.

Further, the Reaffirmation Agreement filed on February 18, 2010 (Docket # 24) is not enforceable. Under 11 U.S.C. § 524(c)(1), a reaffirmation agreement is not enforceable unless it “was made before the granting of the discharge under section 727.” *See also In re Herrera*, 380 B.R. 446, 449-55 (Bankr. W.D. Texas 2007) and cases cited therein. Citizens Bank did not sign the Reaffirmation Agreement until February 17, 2010, well after the discharge order was entered on January 25, 2010. This is demonstrated by Part B of the Reaffirmation Agreement.

For these reasons,

IT IS ORDERED that the Motion (Docket # 25), is DENIED.

IT IS FURTHER ORDERED that the Reaffirmation Agreement (Docket # 24), is DISAPPROVED as unenforceable under 11 U.S.C. § 524(c)(1).

**Signed on February 18, 2010**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**